

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

OLIVIA SELTO, individually, as guardian of minor child K.P. and as Personal Representative of the Estate of KEVIN PETERSON JR, deceased, TAMMI BELL, individually and as Personal Representative of the Estate, and KEVIN PETERSON SR, individually,

## Plaintiffs,

V.

COUNTY OF CLARK, a political subdivision of the State of Washington; SHERIFF CHUCK ATKINS; Sheriff's Detective ROBERT ANDERSON; Sheriff's Deputy JONATHAN FELLER; and JOHN and JANE DOES 1-10, in their official and personal capacities,

## Defendants.

No. 3:22-cv-5384

DEFENDANTS' ANSWER TO  
COMPLAINT AND AFFIRMATIVE  
DEFENSES

## JURY DEMAND

Defendants, COUNTY OF CLARK, A POLITICAL SUBDIVISION OF THE STATE OF WASHINGTON; SHERIFF CHUCK ATKINS; SHERIFF'S DETECTIVE ROBERT ANDERSON; and SHERIFF'S DEPUTY JONATHAN FELLER, in answer to OLIVIA SELTO, individually, as guardian of minor child K.P. and as Personal Representative of the Estate of KEVIN PETERSON JR, deceased, TAMMI BELL, individually and as Personal Representative of the Estate, and KEVIN PETERSON SR, individually's complaint, admits, denies and alleges as follows:

**DEFENDANTS' ANSWER TO COMPLAINT AND  
AFFIRMATIVE DEFENSES - 1**

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## I. INTRODUCTION

1. Defendants deny the allegations contained in paragraph 1 of Plaintiffs' Complaint.

2. Defendants deny the allegations contained in paragraph 2 of Plaintiffs' Complaint.

3. Defendants deny the allegations contained in paragraph 3 of Plaintiffs' Complaint.

4. Defendants deny the allegations contained in paragraph 4 of Plaintiffs' Complaint.

5. Defendants deny the allegations contained in paragraph 5 of Plaintiffs' Complaint.

## II. PARTIES

6. Defendants admit the allegations contained in paragraph 6 of Plaintiffs' Complaint.

7. Defendants admit Sheriff Atkins was the elected Sheriff at the time of the incident. Defendants deny the remaining allegations contained in paragraph 7 of Plaintiffs' Complaint.

8. Defendants admit the allegations contained in paragraph 8 of Plaintiffs' Complaint.

9. Defendants admit the allegations contained in paragraph 9 of Plaintiffs' Complaint.

10. Defendants admit the allegations contained in paragraph 10 of Plaintiffs' Complaint.

11. Defendants deny for lack of knowledge the allegations contained in paragraph  
11 of Plaintiffs' Complaint.

### III. JURISDICTION AND VENUE

12. This paragraph contains legal conclusions and therefore Defendants deny the allegations contained in paragraph 12 of Plaintiffs' Complaint.

1       13. This paragraph contains legal conclusions and therefore Defendants deny the  
2 allegations contained in paragraph 13 of Plaintiffs' Complaint.

3       14. Defendants admit the allegations contained in paragraph 14 of Plaintiffs'  
4 Complaint.

5                          **IV. FACTS**

6       **A. Wrongful Death of Kevin Peterson Jr.**

7       15. This paragraph contains legal conclusions and therefore Defendants deny the  
8 allegations contained in paragraph 15 of Plaintiffs' Complaint.

9       16. This paragraph contains legal conclusions and therefore Defendants deny the  
10 allegations contained in paragraph 16 of Plaintiffs' Complaint.

11       17. Defendants admit that Peterson was engaged in a felony at the time of his  
12 injury and death. Defendants deny the remaining allegations contained in paragraph 17 of  
13 Plaintiffs' Complaint.

14       18. Defendants deny the allegations contained in paragraph 18 of Plaintiffs'  
15 Complaint.

16       19. Defendants deny the allegations contained in paragraph 19 of Plaintiff's  
17 Complaint.

18       20. Defendants admit Peterson realized he was going to be arrested for a serious  
19 felony and attempted to escape arrest. Defendants deny the remaining allegations contained  
20 in paragraph 20 of Plaintiffs' Complaint.

21       21. Defendants admit Peterson had a loaded and operating handgun. Defendants  
22 deny the remaining allegations contained in paragraph 21 of Plaintiffs' Complaint.

23       22. Defendants admit Peterson ran to various parts of the area. Defendants deny  
24 the remaining allegations contained in paragraph 22 of Plaintiffs' Complaint.

25       23. Defendants deny for lack of knowledge the allegations contained in paragraph  
26 23 of Plaintiffs' Complaint.  
27

1       24. Defendants admit that Peterson refused to obey deputies' commands.  
2 Defendants deny the remaining allegations contained in paragraph 24 of Plaintiffs'  
3 Complaint.

4       25. Defendants admit that any video speaks for itself. Defendants deny the  
5 remaining allegations contained in paragraph 25 of Plaintiffs' Complaint.

6       26. Defendants admit that Deputy Anderson gave a statement which speaks for  
7 itself. Defendants deny the remaining allegations contained in paragraph 26 of Plaintiffs'  
8 Complaint.

9       27. Defendants admit that Deputy Feller was a fully commissioned and uniformed  
10 law enforcement officer. Defendants deny the remaining allegations contained in paragraph  
11 27 of Plaintiffs' Complaint.

12       28. Defendants admit that Deputy Feller gave a statement which speaks for itself.  
13 Defendants deny the remaining allegations contained in paragraph 28 of Plaintiffs'  
14 Complaint.

15       29. Defendants admit that Deputy Feller gave a statement which speaks for itself.  
16 Defendants deny the remaining allegations contained in paragraph 29 of Plaintiffs'  
17 Complaint.

18       30. Defendants deny the allegations contained in paragraph 30 of Plaintiffs'  
19 Complaint.

20       31. Defendants deny the allegations contained in paragraph 31 of Plaintiffs'  
21 Complaint.

22       32. Defendants deny the allegations contained in paragraph 32 of Plaintiffs'  
23 Complaint.

24       33. Defendants deny the allegations contained in paragraph 33 of Plaintiffs'  
25 Complaint.

26       34. Defendants deny the allegations contained in paragraph 34 of Plaintiffs'  
27 Complaint.

1       35. Defendants admit deputies fired at Peterson as he pointed a handgun in their  
2 direction. Defendants deny the remaining allegations contained in paragraph 35 of Plaintiffs'  
3 Complaint.

4       36. Defendants deny the allegations contained in paragraph 36 of Plaintiffs'  
5 Complaint.

6       37. Defendants deny the allegations contained in paragraph 37 of Plaintiffs'  
7 Complaint.

8       38. Defendants admit a cell phone and gun were recovered next to Peterson.  
9 Defendants deny the remaining allegations contained in paragraph 38 of Plaintiffs'  
10 Complaint.

11       39. Defendants admit the allegations contained in paragraph 39 of Plaintiffs'  
12 Complaint.

13       40. Defendants admit that Sheriff Atkins gave a statement which speaks for itself.  
14 Defendants deny the remaining allegations contained in paragraph 40 of Plaintiffs'  
15 Complaint.

16       41. Defendants admit that the gun was examined at the crime lab and the report  
17 speaks for itself. Defendants deny the remaining allegations contained in paragraph 41 of  
18 Plaintiffs' Complaint.

19       42. Defendants deny the allegations contained in paragraph 42 of Plaintiffs'  
20 Complaint.

21       43. Defendants deny the allegations contained in paragraph 43 of Plaintiffs'  
22 Complaint.

23       **B. Clark County Sheriff's Department Policies, Customs, and Established  
24 Practices**

25       44. Defendants deny the allegations contained in paragraph 44 of Plaintiffs'  
26 Complaint.

45. Defendants deny the allegations contained in paragraph 45 of Plaintiffs' Complaint.

46. Defendants deny for lack of knowledge the allegations contained in paragraph  
46 of Plaintiffs' Complaint.

47. Defendants admit that the deputies did not have body worn cameras. Defendants deny the remaining allegations contained in paragraph 47 of Plaintiffs' Complaint.

48. Defendants deny the allegations contained in paragraph 48 of Plaintiffs' Complaint.

49. Defendants deny the allegations contained in paragraph 49 of Plaintiffs' Complaint.

50. Defendants deny the allegations contained in paragraph 50 of Plaintiffs' Complaint.

51. Defendants deny the allegations contained in paragraph 51 of Plaintiffs' Complaint.

52. Defendants deny the allegations contained in paragraph 52 of Plaintiffs' Complaint.

**V. CLAIMS**

53. – 72. Defendants deny all claims and allegations in paragraphs 53 – 72, as denied or denied as legal conclusions.

## **VI. JURY DEMAND**

73. Defendants admit the allegations contained in paragraph 73 of Plaintiffs' Complaint.

## VIII. RELIEF REQUESTED

74. This paragraph contains legal conclusions and therefore Defendants deny the allegations contained in paragraph 74 of Plaintiffs' Complaint.

1       75. This paragraph contains legal conclusions and therefore Defendants deny the  
2 allegations contained in paragraph 75 of Plaintiffs' Complaint.

3           BY WAY OF FURTHER ANSWER and AFFIRMATIVE DEFENSE, Defendants  
4 state and allege as follows:

5       1.     **INTENTIONAL CONDUCT, INTOXICATION, COMPARATIVE**  
6     **FAULT:** That the injuries and damages, if any, claimed by the Plaintiff were proximately  
7 caused or contributed to by the fault of Plaintiff.

8       2.     **DISCRETIONARY IMMUNITY:** That all actions of the Defendants herein  
9 alleged as negligence, manifest a reasonable exercise of judgment and discretion by  
10 authorized public officials made in the exercise of governmental authority entrusted to them  
11 by law and are neither tortious nor actionable.

12      3.     **ASSUMPTION OF RISK:** That the injuries and damages, if any, claimed  
13 by the Plaintiff herein, arise out of a condition of which Plaintiff (decedent) had knowledge  
14 and to which Plaintiff (decedent) voluntarily subjected himself.

15      4.     **CAPACITY:** That the Plaintiff lacks capacity to sue either individually or in  
16 a representative capacity.

17      5.     **EXCUSE AND JUSTIFICATION:** That if the Plaintiff sustained any injury  
18 or damage, the same was the result of reasonable conduct and required conduct of the  
19 Defendants under the circumstances, and was excusable and justifiable in connection with  
20 the arrest and in connection with Plaintiff's obstruction of the officer and efforts to resist  
21 arrest.

22      6.     **PROVOCATION:** That if the Plaintiff sustained any injury or damage, the  
23 same was provoked by the conduct of the Plaintiff.

24      7.     **REASONABLE AND LAWFUL FORCE:** That any force utilized by the  
25 Defendants was reasonable, necessary and lawful under the circumstances.

26      8.     **LAWFUL ARREST:** That the arrest of the Plaintiff was lawful.  
27

9. **GOOD FAITH:** That the Defendants at all times acted in good faith in the performance of their duties and are therefore immune from suit for the matters charged in Plaintiffs' Complaint.

10. **MITIGATION OF DAMAGES:** That if the Plaintiffs suffered any damages, recovery therefore is barred by Plaintiffs' failure to mitigate said damages.

11. **QUALIFIED IMMUNITY:** Defendants contend that Plaintiffs' claims are precluded by the doctrine of qualified immunity.

12. **COMMISSION OF FELONY:** Peterson was in commission of a felony at the time of his injury and death, and this constitutes a complete defense to claims under State law.

## **PRAYER FOR RELIEF**

WHEREFORE, Defendants, COUNTY OF CLARK, A POLITICAL SUBDIVISION OF THE STATE OF WASHINGTON; SHERIFF CHUCK ATKINS; SHERIFF'S DETECTIVE ROBERT ANDERSON; and SHERIFF'S DEPUTY JONATHAN FELLER, pray for the following relief:

1. That Plaintiffs' complaint be dismissed with prejudice, and that Plaintiffs take nothing by their complaint;

2. That Defendants be allowed their statutory costs and reasonable attorney fees incurred herein; and

3. For such additional relief the Court may deem just and equitable.

## JURY TRIAL DEMANDED

The Defendants respectfully demand their right to a trial by jury in this matter.

DATED this 10<sup>th</sup> day of August, 2022.

1 KEATING, BUCKLIN & McCORMACK, INC., P.S.  
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4 By: /s/ Andrew Cooley  
5 Andrew Cooley, WSBA #15189  
6 Paul J. Triesch, WSBA #17445  
7 Attorneys for Defendants, County of Clark, Sheriff  
8 Chuck Atkins, Sheriff's Detective Robert Anderson  
9 and Sheriff's Deputy Jonathan Feller  
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## CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

## **Attorneys for Plaintiffs**

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DATED: August 10, 2022

/s/ Andrew Cooley

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